

=====
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 84 SSM 2

VBH Luxury, Incorporated,
Plaintiff,

v.

940 Madison Associates LLC,
Third-Party Respondent,
Excelsior Insurance Company,
Third-Party Appellant,
et al.,
Third-Party Defendant.

Submitted by Richard E. Lerner, for third-party
appellant.

Submitted by David Einhorn, for third-party respondent

MEMORANDUM:

The order of the Appellate Division should be reversed,
with costs, the judgment of Supreme Court reinstated, and the
certified question answered in the negative.

Third-party plaintiff/landlord 940 Madison Associates,

LLC is an additional insured under a commercial general liability policy issued by third-party defendant Excelsior Insurance Company to plaintiff/tenant VBH Luxury, Inc. "only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to [tenant]." Although landlord would be entitled to a defense in an action commenced against it by a third party for an injury suffered on the leased premises (see ZKZ Assoc. v CNA Ins. Co., 89 NY2d 990, 991 [1997]), the policy does not provide coverage for liability to its co-insured for damage to property owned, rented, or occupied by the insured (see Insurance Corp. of N.Y. v Cohoes Realty Assoc., L.P., 50 AD3d 1228, 1229-1230 [3d Dept 2008]; Utica Mut. Ins. Co. v Watertown Indus. Ctr. Local Dev. Corp., 9 AD3d 836, 837 [4th Dept 2004], lv denied 11 AD3d 1053 [4th Dept 2004]). Thus, Excelsior was not obligated to defend landlord in the underlying action.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, judgment of Supreme Court, New York County, reinstated, and certified question answered in the negative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 14, 2012